

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BOSTON SCIENTIFIC CORPORATION and
BOSTON SCIENTIFIC SCIMED, INC.,

Plaintiffs,

v.

CORDIS CORPORATION, CORDIS LLC, and
WYETH

Defendants.

CASE NO. 09-2585 RH1</ASB

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT OF
PATENT INVALIDITY AND NONINFRINGEMENT**

Plaintiffs Boston Scientific Corporation and Boston Scientific Scimed, Inc. (collectively, “BSC”), through its attorneys, bring this complaint against Defendants Cordis Corporation, Cordis LLC (collectively, “Cordis”) and Wyeth, and request a jury trial on all issues so triable. BSC alleges as follows, upon knowledge with respect to itself and its own acts, and upon information and belief as to the circumstances and facts of others:

NATURE OF THE ACTION

1. This is an action for declaratory judgment that United States Patent No. 7,591,844 (“the ‘844 patent”), entitled “Medical Devices, Drug Coatings and Methods for Maintaining the Drug Coatings Thereon” is invalid and not infringed by BSC. A copy of the ‘844 patent is attached as **Exhibit A**.

THE PARTIES

2. Plaintiff Boston Scientific Corporation is a corporation organized under the laws of the State of Delaware, having its principal place of business at One Boston Scientific Plaza, Natick, Massachusetts 01760.

SCANNED

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3. Plaintiff Boston Scientific Scimed, Inc. is a corporation organized under the laws of the State of Minnesota, having its principal place of business at One Scimed Place, Maple Grove, MN 55311-1566.

4. BSC's business relevant to the allegations herein is headquartered in Maple Grove, Minnesota.

5. Upon information and belief, Defendant Cordis Corporation is a corporation organized under the laws of the State of Florida with its principal place of business in Warren, New Jersey. Defendant Cordis LLC is a Delaware Limited Liability Company with its principal place of business in San German, Puerto Rico. Cordis LLC is an affiliate of Cordis Corporation and purports to have some interest in the '844 patent. Cordis Corporation and Cordis LLC will be referred to collectively as "Cordis."

6. Upon information and belief, Defendant Wyeth is a corporation organized under the laws of the Delaware and has a principal place of business in Madison, New Jersey.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States (35 U.S.C. § 1, et seq.).

8. This Court has jurisdiction over the subject matter of all causes of action herein pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

9. On information and belief, Cordis and Wyeth have systematic and continuous contacts in this judicial district.

10. On information and belief, Cordis and Wyeth regularly avail themselves of the benefits of this judicial district, including the jurisdiction of the courts.

11. On information and belief, Cordis and Wyeth regularly transact business within this judicial district.

12. On information and belief, Cordis and Wyeth regularly sell products in this judicial district. Cordis and Wyeth derive substantial revenues from sales in this district.

13. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND

14. BSC is a world-renowned leader in the development of intravascular stents used to treat coronary disease.

15. Cordis directly competes with BSC in the field of intravascular stents used to treat coronary artery disease.

16. Cordis has a well-known history of suing competitors, including BSC, in the field of intravascular stents for patent infringement. Within the past several years, Cordis has sued BSC, alleging patent infringement in cases involving intravascular stents used to treat coronary artery disease. BSC has also brought suits related to patent infringement against both Cordis and Wyeth.

17. BSC received approval for its PROMUS stent in the United States on July 2, 2008, and began selling it in the United States shortly thereafter.

18. Abbott Laboratories ("Abbott") currently manufactures and sells the XIENCE V drug-eluting stent, which is the same product as the PROMUS stent.

19. Cordis has a history of requesting that the Patent and Trademark Office expedite consideration of a patent because of perceived patent infringement, and promptly filing lawsuits once the patent is issued. For example, Cordis requested expedited consideration for patents in the same technology area as the '844 patent (U.S. Patent No. 7,217,286, U.S. Patent No. 7,223,286, U.S. Patent No. 7,229,473, and U.S. Patent No. 7,300,662) based on alleged infringement by XIENCE, and sued Abbott the day the patents issued..

20. On September 22, 2009, the Patent and Trademark Office issued the '844 patent. *See Exhibit A.*

21. Cordis again requested that the Patent and Trademark Office expedite its consideration of the '844 patent. The request is attached as **Exhibit B**.

22. On September 21, 2009, Cordis and Wyeth filed an action against Abbott and BSC in the United States District Court for the District of New Jersey alleging, *inter alia*, that the PROMUS stent infringes the '844 patent. Although said action was premature and inoperative, it further evidences the existence of a real, imminent dispute between the parties.

23. The above-referenced circumstances have created a present substantial controversy among Cordis, Wyeth, and BSC concerning the PROMUS stent.

COUNT 1

INVALIDITY OF U.S. PATENT NO. 7,519,844

24. BSC repeat and realleges each and every allegation contained in paragraphs 1-23 of this Complaint as though fully set forth herein.

25. Cordis and Wyeth's actions have placed BSC in reasonable apprehension that it will be sued for infringement of the '844 patent by the PROMUS stent.

26. On information and belief, each of the claims in the '844 patent is invalid for failure to comply with one or more of the requirements of Title 35, United States Code, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

27. An actual and justiciable controversy exists between Cordis, Wyeth, and BSC regarding the invalidity of the '844 patent.

COUNT 2

NON-INFRINGEMENT OF U.S. PATENT NO. 7,519,844

28. BSC repeat and realleges each and every allegation contained in paragraphs 1-23 of this Complaint as though fully set forth herein.

29. Cordis and Wyeth's actions have placed BSC in reasonable apprehension that it will be sued for infringement of the '844 patent by the PROMUS stent.

30. The PROMUS stent does not infringe any valid claim of the '844 patent.

31. An actual and justiciable controversy exists between Cordis, Wyeth, and BSC regarding the alleged infringement of the '844 patent by the PROMUS stent.

PRAYER FOR RELIEF

WHEREFORE, BSC prays that this Court enter judgment as follows, ordering that:

- (a) Each and every claim of U.S. Patent No. 7,591,844 is invalid.
- (b) Plaintiffs are not liable for directly, contributorily, or inducing infringement of any claim of U.S. Patent No. 7,591,844.
- (c) Defendants and their officers, agents, employees, representatives, counsel and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from threatening or charging infringement of, or instituting any action for infringement of U.S. Patent No. 7,591,844 based on Plaintiffs' products.
- (d) Defendants pay to Plaintiffs the costs and reasonable attorney's fees incurred by Plaintiffs in this action; and
- (e) Plaintiffs be granted such other and further relief as this Court deems just and proper.

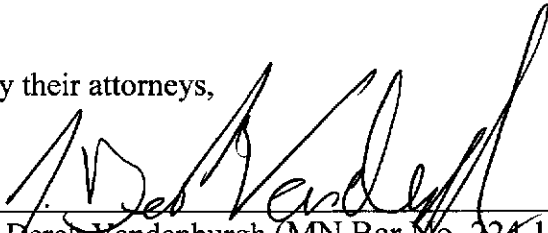
DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

**BOSTON SCIENTIFIC CORPORATION and
BOSTON SCIENTIFIC SCIMED, INC.,**

September 22, 2009

By their attorneys,



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September 22, 2009

Clerk of U.S. District Court
300 South Fourth Street
Minneapolis, MN 55415

Re: *Boston Scientific Corporation, et al. v. Cordis Corporation, et al.*

Dear Clerk of Court:

Enclosed for filing please find the following documents:

1. Summons;
2. Complaint;
3. Civil Cover Sheet.

Also enclosed is our check for \$350 for the filing fee. Please stamp the copy of the Complaint and the Summons and return them to the courier. Thank you.

Very truly yours,

J. Derek Vandenburg

JDV/dr
Encs.

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